

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JASON M VARGAS,
Plaintiff,
v.
CRAIG KOENIG, et al.,
Defendants.

Case No. [22-cv-02721-JST](#)

ORDER OF DISMISSAL

Plaintiff filed this *pro se* civil rights action pursuant to 42 U.S.C. § 1983. ECF No. 1. For the reasons set forth below, the Court DISMISSES this action without prejudice.

DISCUSSION

The operative complaint is docketed at ECF No. 39. The operative complaint sues various CTF correctional officials for being deliberately indifferent to Plaintiff's health and safety by causing, or allowing, COVID-19 to spread within Correctional Training Facility through certain actions and inactions in mid to late 2020. *See generally* ECF No. 39.

On September 27, 2024, the Court dismissed numerous claims in the operative complaint for failure to exhaust administrative remedies without prejudice to filing a new action raising these claims once the administrative remedies were exhausted. The Court dismissed the operative complaint's remaining federal claims—Defendants were deliberately indifferent to Plaintiff's health and safety when they moved inmates Kim and Garcia into X-Wing and allowed COVID-positive inmates to use the same showers used by COVID-negative inmates—with leave to amend because Plaintiff had not sufficiently alleged a causal link between the alleged actions and inactions and his contracting COVID to state cognizable Eighth Amendment claims. The Court declined to address the state law claims because it had dismissed all the federal law claims but

1 advised Plaintiff that he could replead his state law claims in his second amended complaint. *See*
2 *generally* ECF No. 54.

3 The Court ordered Plaintiff to file a second amended complaint in accordance with the
4 September 27, 2024 Order by October 25, 2024, or face dismissal of this action for failure to state
5 a claim and/or failure to prosecute. ECF No. 54 at 15-16. The deadline to file a second amended
6 complaint has passed, and Plaintiff has neither filed a second amended complaint nor
7 communicated with the Court.

8 Accordingly, for the foregoing reasons and for the reasons stated in the Court's September
9 27, 2024 Order, this action is DISMISSED. The dismissal is without prejudice to filing a motion
10 to reopen. Any motion to reopen must be accompanied by a proposed second amended complaint
11 that addresses the deficiencies identified in the Court's September 27, 2024 Order, and must
12 explain why Plaintiff failed to timely file a second amended complaint.


13 CONCLUSION

14 For the foregoing reasons and for the reasons stated in the Court's September 27, 2024
15 Order, this action is DISMISSED. The dismissal is without prejudice to filing a motion to reopen.
16 Any motion to reopen must be accompanied by a proposed second amended complaint that
17 addresses the deficiencies identified in the Court's September 27, 2024 Order, and must explain
18 why Plaintiff failed to timely file a second amended complaint.

19 Judgment is entered in favor of Defendants and against Plaintiff. The Clerk is directed to
20 close the file.

21 **IT IS SO ORDERED.**

22 Dated: December 27, 2024

23 
24 JON S. TIGAR
United States District Judge